SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 1.

EDWARD J. PEARCY, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

The plaintiff comes here under a writ of error to review and correct a judgment of the Circuit Court of the United States for the Southern District of New York, entered on the 16th day of February, 1904, sustaining a demurrer to the complaint and dismissing said complaint with costs.

The plaintiff is a citizen of the United States, resident in the Isle of Pines. The action was brought to recover a certain sum of money as damages resulting from the alleged wrongful seizure and detention by the defendant, the collector of customs at the port of New York, of forty boxes of cigars, the property of the plaintiff, the product of and manufactured in the Isle of Pines and by plaintiff brought thither direct from the said Isle of Pines, without landing them on Cuban soil, during the month of September, 1903.

The cigars were admittedly packed and stamped according to the provisions of the internal-revenue acts, which

said acts were in all respects and at all times strictly complied with. The alleged ground, however, for the said alleged wrongful seizure and detention was that the said goods were "foreign goods" and did not constitute a legal package within the meaning of the statutes of the United States of America regulating importations from foreign countries. The plaintiff in his complaint contends that the goods in question, having come from the Isle of Pines, were "not imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must, under and by virtue of the provisions of the Constitution of the United States in that regard, be admitted to free entry in any port of the United States" (*vide* Complaint).

The demurrer was sustained on the ground that the complaint did not state facts sufficient to constitute a cause of action.

All the facts are admitted.

Assignment of Errors.

I.

That the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error.

II.

That the said judgment was not given for the said plaintiff in error against the said defendant in error, as demanded in the complaint.

III.

That the said Circuit Court of the United States for the Southern District of New York held that the facts stated in the complaint herein do not constitute a cause of action.

IV.

That in and by its said judgment the said circuit court dismissed the complaint herein, with costs.

ARGUMENT.

The sole issue before this learned court is the status of the Isle of Pines. The question is whether or not the Isle of Pines, from which island the goods were admitted to have been brought, was, in September, 1903, a foreign country, so that goods brought thence were "articles imported from a foreign country," according to the terms of the Dingley act (1897, 30 Stat., p. 151). If the Isle of Pines is a part of the United States, the Collector committed conversion, and his demurrer to the complaint herein should have been overruled. In support of this contention, plaintiff respectfully submits the following argument. His two basic propositions are:

I. Up to the ratification of the second Treaty of Paris (April 11, 1899), the Isle of Pines was under the sovereignty of the Crown of Spain. It did not belong to, nor was it a part of, the Island of Cuba.

II. Under Article II of the said treaty—"Spain cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies. * * *—the Isle of Pines passed direct from the sovereignty of the Crown of Spain to that of the people of the United States.

The argument upon the first point may well be initiated by a brief exposition of the origin and history of Spanish sovereignty over this island.

The Isle of Pines, situated approximately in the latitude of Yucatan, Mexico, and in the longitude of Tampa, Florida, and lying in the Caribbean Sea, is an island containing in area about 1,240 square miles, being almost equal in size to

our State of Rhode Island and in shape almost circular, except for a prolonged cape at its southwestern extremity, and a stant from about forty to sixty miles southerly from the Cuban shore, according as the distance is measured to the inner or the outer part of the bay which cuts into the Cuban coast line to the northward.

Prior to the year A. D. 1493, the history of this island is unknown. In that year the great navigator, Columbus, made a landing, erected the banner of Castile, and claimed the lands in the name of the then Spanish sovereigns, Ferdinand and Isabella. He named the island "La Evangelista" and occupied it as a separate discovery under the Spanish flag. It again received historical notice when almost a half century later the English Admiral, Sir Francis Drake, suffered a severe defeat off its coast in a battle with the Spanish fleet. The island's strategic position, its rich resources, attractive climate, and its state of unoccupancy by civilized people all contributed to cause it to be chosen as a rendezvous for pirates and buccaneers, who then roved the surrounding seas. Such lawless occupancy continued, except for a brief period of disputed sovereignty by the English about A. D. 1763, until about A. D. 1828, when settlement by Spain began. The Spanish government established a military station and at times also maintained a penal colony there. The next change occurred about A. D. 1880, when, after Spain's West Indian possessions had narrowed down to Cuba, Porto Rico, and the Isle of Pines, together with many very small islands, the Isle of Pines, merely as a matter of greatest economy and convenience in governmental administration and in no wise affecting Spanish sovereignty thereover, was for the time joined by its sovereign, Spain, with the municipality of Habana, of the Spanish colony of Cuba. Up to this time—*i. e.*, for a period of almost four centuries—it had not been included in the government of Cuba by any edict or act of the Spanish government. Moreover, from the time of the administrative junction up to the present day the isle

has been known among all geographers, publicists, and nations by this distinct name, and none of them have ever [illegible] very recent years, it would seem, has the great strategic and commercial importance of the island (Senate Document No. 205, pp. 64-71, incl., 59th Cong., 1st sess.), begun to be appreciated, and only then did its orphanage, so to speak, cease and its real development begin. Hence the paucity of information concerning the island and its early history.

Proposition I Subdivided.

1. Spain acquired title to and sovereignty over the Isle of Pines by right of discovery.

2. Spain, until A. D. 1899, retained the title and sovereignty thus acquired.

3. Since a territory can have but one sovereign at one time, it follows that the Island of Cuba at no time prior to 1899 acquired any title to the Isle of Pines, either expressly or by implication.

The acquisition by Spain of sovereignty over the Isle of Pines by right of discovery is internationally recognized. This sovereignty Spain retained—except possibly for a brief period of disputation by the English, about A. D. 1763—up to the ratification of the second Treaty of Paris (April 11, 1899). The continuance of this Spanish sovereignty is a historical fact. It will not be denied, plaintiff believes, by any nation or by any publicist, or even by this defendant, except, possibly, as to the effect of the arrangement of about A. D. 1880 already referred to. This arrangement in no wise affected the question of sovereignty, nor did it make the isle a part of the Island of Cuba. To construe this mere

administrative act into a surrender or cession of sovereignty is not possible under any tenet of constitutional law. Its true significance, if any, plaintiff holds to be this: That all which can be said is that it was entered upon for the sake of obtaining greater economy and convenience in governmental administration. No express cession of sovereignty was intended by Spain, nor was any implied cession or sovereignty contemplated. The arrangement effected this change and this only. Instead of continuing to manage the government of the then unimportant Isle of Pines direct, Spain deemed that a considerable saving of expense would be secured and a far greater convenience of administration obtained if the government of this isle was directed through the Spanish municipality of Habana of the Island of Cuba. With these aims and solely for these purposes, the arrangement was entered into.

In the science of international law and the sovereignty of nations, there is an all-important distinction between the case of a mere arrangement made for purposes as herein stated and a case where the isle is actually ceded or relinquished to a neighboring mainland or larger island. Administratively, the two islands were joined; politically, they remained separate, each owing allegiance to the mother country, Spain.

There is, then, no more reason for holding that the Isle of Pines at the time of the ratification belonged to Cuba than there would be for holding that Tasmania belonged to Australia instead of to the Kingdom of Great Britain, or that Barbadoes belonged to Jamaica instead of to Great Britain. These are in point with the case at bar, the government of each of the islands of Tasmania and Barbadoes being for convenience administered through the Australian Commonwealth and the British seat of government for the West Indies located at Kingston, Jamaica, respectively.

Geographical Location.

Geographically also the two islands are distinctly separate, being at their nearest point of approach about forty miles apart. Who will say that the maritime jurisdiction of the Island of Cuba extends thus far? In his search among the leading authorities on international law, this plaintiff finds them stating the extent of a country's maritime jurisdiction as follows:

> "From Bynkershoek came the modern, more precise rule; which first limited the territorial right by a cannon shot and then by a marine league."
>
> *Introduction to International Law*, p. 69 (6th ed., 1899), Woolsey.

> "The greatest reach of a cannon ball fired from a cannon on the land is, then, really the limit of the territorial sea."
>
> *Hautefeuille Droit de Neutres*, title 1, ch. 3, sec. 1, p. 89.

No authority has been found to hold that the maritime jurisdiction of one island can extend to another island located in the open sea forty miles distant from the nearest shore. Geographically, then, there appears to be no ground for holding that the Isle of Pines belonged to or was a part of the Island of Cuba.

In the absence, therefore, of any express cession of sovereignty to Cuba, or of any impliable intention to include this isle as a part of Cuba, or of any good geographical reason for so doing, it must follow that on April 11, 1899, Spain did own, and Cuba, a mere colony, did not own or include, the Isle of Pines.

The plaintiff now comes to his second proposition, viz.:

Under the terms of the second Treaty of Paris, title to the Isle of Pines passed by direct cession from the Crown of Spain to the people of the United States.

Article II of the said treaty reads:

> "*Spain cedes to the United States* the Island of Porto Rico and *other islands now under Spanish sovereignty in the West Indies,* and the Island of Guam in the Mariannas or Ladrones."

The only reasonable construction applicable to these words, it is believed, is that by Article II of the treaty, as above quoted, the United States acquired all the islands under Spanish sovereignty in the West Indies except the Island of Cuba. In support of this belief, the plaintiff submits these points with argument following:

1. That the very language of the treaty itself, as explained in the protocols and construed according to its fair and ordinary meaning, is overwhelmingly in favor of Proposition II.

2. That on or about August 14, 1899, the United States War Department, in an official letter stated:

> "The Isle of Pines, * * * was ceded by Spain to the United States, and is, therefore, a part of our territory."

3. That the maps and other data prepared and issued by the General Land Office of the Department of the Interior indicate the Isle of Pines as being United States territory.

4. That the famous "Platt Amendment" provided:

> "That the Isle of Pines shall be *omitted* from the proposed constitutional boundaries of Cuba; the title thereto being left to future adjustment by treaty."

5. That when Cuba was transferred to the government of its people, on May 20, 1902, the American military governor of Cuba was ordered by the United States Secretary of War *to continue "the present government of the Isle of Pines"* (which was American) "as the *de facto* government."

6. That by the terms of the proposed treaty, negotiated in 1903 and still pending in the United States Senate, our country's present ownership of the Isle of Pines is clearly recognized by the sections which provide for a transfer of our title to Cuba, the consideration being certain naval stations which we theretofore possessed.

7. That several hundred United States citizens, including this plaintiff, acting upon the terms of the treaty, upon the assurance of the War Department, and upon the uniform policy of this government up to May, 1902, settled in the Isle of Pines and bought property and established homes on what they believed to be American soil, thus *acquiring vested rights* in some cases years before their government had even questioned its title to the isle.

Territory Relinquished to Cuba by the Treaty of Paris

An investigation of the papers and recorded discussions leading up to the signing of the treaty shows reference everywhere and frequently made to the "Island of Cuba" as the territory concerning which "Spain relinquishes all claim of sovereignty over and title to."

The following is a partial list:

Protocol II, Annex 2, paragraphs 7, 10, and 11.
Protocol III, Annex 2, Articles I, II, III, IV, V, and VI.
Protocol IV, Annex 1.
Protocol IV, Annex 2, Articles I and II.
Protocol V, Annex 1.
Protocol VII, Annex 1, Articles I, II, III, IV, and V.

Protocol IX, Annex 1, Articles I, III, IV, and V.
Protocol X, etc.

Vide 55th Cong., 1st session, Senate Document No. 62, part I, a copy of which is submitted herewith and marked Plaintiff in Error's Exhibit A.

Indeed, section 1 of Article I of the treaty is almost the only instance where the intent, "Island of Cuba," is not thus specified. It is submitted that the great desire for laconic expression and euphonious language are alone responsible for the omission of the words "island of" from section 1 of Article I. But that "Island of Cuba" was intended as the meaning of this article is further evidenced by section 2 of the said article, which reads:

> "And as the *island* is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, * * *."

Clearly this article does not refer to or embrace the Isle of Pines. It means what it says, viz., the "Island of Cuba," and that island alone.

Under Article II of the Treaty, the Isle of Pines Was Ceded Directly to the United States.

This article reads:

> "Spain cedes to the United States the Island of Porto Rico *and other islands* now under Spanish sovereignty in the West Indies, * * *."

It is a historical fact that at this time Spanish sovereignty in the West Indies was limited to Cuba, Porto Rico, the Isle of Pines, and some very small, insignificant islands, mostly uninhabited and located round about these three large ones.

Such being the fact, it is submitted that the only reasonable conclusion from this language can be, that by the "other islands" phrase it was the intention of the parties to cede, and they did cede, the Isle of Pines direct from the Crown of Spain to the people of the United States just as plainly as Porto Rico, in the same article, was ceded. It cannot be too greatly emphasized that such is the only reasonable construction applicable to this phrase. Unless it refers to the Isle of Pines, it means nothing, and certainly it would be a most serious imputation to hold that the learned commissioners deliberately inserted words meaning nothing or worse than nothing into so important a document of state.

The best evidence of just what our government acquired under Article II of the treaty is to be found in a consideration of the

(*a*) *Objects sought by the treaty-makers:*

These on the part of the victorious Americans were twofold: the freedom of the Cubans from the tyranny of Spain, which was the principal cause of the war, and, secondly, compensation to the United States for expenses incurred. By the gift of liberty to the Cubans they received all they sought. All territory except the Island of Cuba was considered by the commissioners of both nations as being ceded to the United States. This is further evidenced by the

(*b*) *Language of the protocols and of the treaty:*

The Spanish text is said to be even more positively expressive of this intent than is the English one. The last ground for possible doubt is removed by a note presented by one of the Spanish commissioners and published as an annex to protocol No. 9. This note reads:

"They (the United States) * * * did subsequently claim the sovereignty of the latter island

> (Porto Rico) and of the others surrounding Cuba, which will render impossible its independence without the will and gracious consent of the United States, which will always have it at their mercy, owing to their control over the islands surrounding it like a band of iron * * *."
>
> Senate Document No. 62, part 1, pp. 82 and 83. 55th Cong., 3d Session.

> "This," says Daniel P. Thompson, Esq., writing in *Public Opinion* (N. Y., Dec. 16, 1905), "is as plain as words can make it; the commissioners of the United States were demanding sovereignty over the islands surrounding Cuba; they were asking freedom for Cuba, and ownership for the United States of everything else Spain had in the West Indies. Not only was this the demand of our commissioners at Paris; it was what we got by Article II of the treaty as signed. Six months after the treaty was made, no more questions had arisen over our ownership of the Isle of Pines than had come up in regard to Porto Rico. They were on the same basis exactly—possessions of the United States, acquired by treaty from Spain."

James Norton Callahan, in his work on Cuba and International Relations, speaking of the events that led up to the signing of the treaty, says (page 494):

> "The terms were liberal to Spain and just to the Americans. Not a dollar of war indemnity was asked, but this was probably because the United States knew that Spain had no money. * * * *All the West Indies except Cuba were to be ceded to the United States;* Spanish authority was to be relinquished in Cuba * * *."

Finally we have the statement itself, by one of our commissioners who negotiated the treaty, to the Committee on Foreign Relations of the U. S. Senate, "That the commissioners of the United States did not regard the Isle of Pines as being a part of Cuba, but as a separate island, that was

ceded to the United States in article 2 of the Treaty of Paris."

> See minority report of Committee on Foreign Relations, 59th Cong., 1st session, Senate Document No. 205, p. 193, a copy of which report is submitted herewith and marked Plaintiff in Error's Exhibit B.

Such, then, was the intention both of the Spanish and American commissioners. And as to the weight to be credited to the intent of the parties who make a treaty, this learned court has said:

> "The instrument (treaty), it is contended, should be most liberally construed. *Its interpretation is to be sought in the motives and policy of the parties and in their words and in their acts.*"
>
> United States *v.* Percheman, 7 Peters, 57-65.

Official Acts and Declarations Subsequent to the Treaty Support the Same View.

Not only did all the parties thus intend at the time of the making of the treaty, but subsequent acts and declarations for more than three years thereafter were almost uniformly in support of this view. We already have official declarations, both executive and legislative. It solely remains for our learned judicial department to declare itself, as plaintiff believes, by concurring in the view of the other two departments as first officially expressed.

Taking these subsequent acts and declarations chronologically, plaintiff submits the following correspondence as being the official declaration of the War Department. The letter and reply explain themselves:

> "CARLISLE, PA., *August* 10, 1899.
>
> "WAR DEPARTMENT, WASHINGTON, D. C.
>
> "GENTLEMEN: I am seeking information about the timber interests in the Isles of Pines and would

be obliged for any information you may be able to give me, especially what will be the governmental status of the island? Does it come in as Porto Rico, or under the same conditions as Cuba? And how can title be secured, etc.? I expect to go in November.

"For which information I will say thanks in advance.

"Yours, GEO. BRIDGES.

"I expect to operate sawmills. Am no land-grabber."

"WAR DEPARTMENT,
"WASHINGTON, *August* 14, 1899.

"SIR: Referring to your communication of the 10th inst., soliciting information respecting the Isle of Pines, I am directed by the Assistant Secretary of War to *advise you that the island was ceded by Spain to the United States and is therefore a part of our territory*, although it is attached at present to the division of Cuba for governmental purposes.

"A copy of an official report on the Isle of Pines is inclosed for your information, and you are advised that the disposition of public lands must await the action of Congress.

"Very respectfully,
"JOHN J. PERSHING,
"*Assistant Adjutant General.*

"Mr. GEORGE BRIDGES, *Carlisle, Pa.*"

Says the minority report of the Committee on Foreign Relations (page 212):

"It appears from the record of the War Department, printed on pages 31 to 36 of the report of the majority that from January 13th to February 16th, 1900, the Secretary of War was absent from the Department, or that he had turned over the questions relating to the Isle of Pines to Mr. Meiklejohn, Assistant Secretary * * * On the 13th and 15th of January, 1900, G. D. Meiklejohn, Assistant Secretary of War, reaffirmed the statement of Assistant

Adjutant General John J. Pershing, as to the status of the Isle of Pines made to Bridges on the 14th of August, 1899, as follows:

"'WAR DEPARTMENT,
"'OFFICE OF THE ASSISTANT SECRETARY,
"'WASHINGTON, D. C., *January* 13, 1900.

"'SIR: I have the honor to acknowledge the receipt, by reference from the honorable the Secretary of State, of your letter of the 20th ultimo asking if the islands south of Cuba, formerly belonging to Spain, now belong to the United States or to Cuba; whether you have a right to hunt along the coasts thereof in a boat too small to enter at the custom-house, carrying probably 100 pounds of ammunition, two or three guns, and two months' provisions for two men, and requesting publications descriptive of said islands.

"'In reply, you are advised that the *Isle of Pines was ceded by Spain to the United States, and therefore is a part of our territory,* although it is attached at present to the division of Cuba for governmental purposes.

"'In reply to your inquiry relative to guns and ammunition, your attention is invited to the inclosed copy of an order of the military governor of Cuba, dated September 18, 1899, modifying the instructions dated April 27, 1899. You are further informed that the Department has no publications descriptive of these islands.

"'Very respectfully,
"'G. D. MEIKLEJOHN,
"'*Assistant Secretary of War.*

"'Mr. L. C. LEITH,
"'*N. W. corner Market and Eighteenth Streets, Galveston, Tex.*'"

The language used here is significant, unequivocal, and decisive; it admits of no doubt. These letters were given wide circulation among friends and intending colonists. They were sufficient to remove any question which might theretofore have been in the mind of any colonist or intend-

ing colonists as to the isle's ownership. It was "ceded" to the United States; it became "a part of our territory."

This cession of the Isle of Pines to the United States was nowhere disputed; indeed, in several instances it was recognized by an affirmative act. As one example, plaintiff cites the action of the great Catholic Church, which in the West Indies promulgates almost the sole religious faith. This church early recognized the effect of the Treaty of Paris. Accordingly it separated the ecclesiastical power over the parish of the Isles of Pines from the diocese of Havana (Cuba) and placed it under the direct supervision of the diocese of Florida (United States).

During this period also our government published a map of the Isle of Pines. This map, many copies of which were printed and distributed, advertised extensively the attitude of the General Land Office, or, in other words, the Department of the Interior. These Land Office maps, one of which hangs on the wall of the Bureau of Insular Affairs, in the Department of War, likewise indicate the Isle of Pines as being United States territory and akin with Porto Rico.

The "Platt Amendment" Expressly Excludes the Isle of Pines from the Boundaries of Cuba.

Advancing at this point over a period of about two years, plaintiff next calls attention to Article VI of the amendment to the Army appropriation bill, passed March 2, 1901, and widely known by the popular title "Platt amendment." This amendment, which is still in force, expressly provided "that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty."

This clause is doubly significant, showing, as it does, the attitude of both the republics. Up to this point we have been noting the acts of our own government and the atti-

tude of our own people. That the Cubans themselves claimed no conflicting title is clearly proven by their vote on June 12, 1901. Without discussion and without debate, the Cuban Congress incorporated this identical language into their own Constitution. *By so doing they expressly admitted, first, that the Isle of Pines was not then a part of the Cuban Republic, and, secondly, that the isle should not become Cuban soil unless granted to the Republic from the United States by good and valid treaty.* The effect of this action must have been to leave the isle as theretofore, under American administration and control; for when the Congresses of both countries have expressly declared that at present the Isle of Pines is not Cuban territory it must be territory of the United States. It cannot be "No Man's Land."

Says the afore-named minority report (page 190):

> "The government of Cuba, in the very act of its creation by a law of the United States known as the Platt amendment, was excluded from jurisdiction of every nature over the Isle of Pines." * * *
>
> "If the Isle of Pines ever belonged to Cuba in a geographical sense, or as a political dependency, or in the full rights of sovereignty, such rights were completely extinguished by its exclusion from the limits of Cuba by the express provisions of the Platt amendment, and by the constitution of Cuba, and by the treaty with the United States of July 2, 1904."
>
> "This careful provision, thrice repeated in the most solemn form, ought to be sufficient to silence the assertion by Cuba or by any one, however high in official station, that the Isle of Pines continues to be a part of Cuba, and that it is not and never has been territory of the United States. If it never was in any sense 'territory of the United States,' what possible right could our Congress have to require, as they did in the Platt amendment, to an appropriation bill that Cuba should expressly exclude the Isle of Pines from her territorial limits by a provision in her constitution?"

The Argument Against American Ownership.

Such evidence the American residents submit in favor of ownership on the part of the United States. We shall now examine what merit, if any, there is in the contention of the Cubans. The minority of the Committee on Foreign Relations of our Senate (59th Cong., 1st session), after a careful and painstaking consideration of the treaty attempting to provide for the adjustment of the title to the Isle of Pines, said:

> *"No act of the government, in pursuance of law, or in virtue of lawful authority, has admitted title in Cuba to the Isle of Pines."*

We now turn to the report of the majority of the same committee.

What facts are presented? In its beginning the report states the claim of the American residents—that their rights had become vested as a result of the assurances given by the Treaty of Paris, the Platt amendment, the personal letters of President McKinley, Secretary of State Hay, and Secretary of War Root, and the pledges of Governor General Wood, etc. But it does not answer these facts. The best the chairman can do is to bring out a dusty census report, and from its unfamiliar pages set forth for the first time certain statements.

The American residents deny the accuracy of this census report, compiled by Cuban employees. Moreover, they did not have access to it at the time of its alleged publication. Consequently their rights are not prejudiced nor is their demand for justice estopped. Aside, however, from any question of estoppel, the report proves nothing beyond what plaintiff has already admitted to be true. The census report, it is alleged, shows that the Isle of Pines was in 1899 included in the province of Habana for the purpose of census-

taking. At most, this proves nothing more than a continuation of the administrative arrangement already referred to (*vide*, page 5, *supra*). Cuba at this time was not a sovereign State. It was a ward, under the care of its guardian, the United States government. The Isle of Pines belonged to the United States. Under the circumstances, it was but natural that our government, which was governing both Cuba and the Isle of Pines, should leave the old administrative arrangement unaltered. At least it was not feasible to change the existing order of things for the mere purpose of taking a census, which was to be begun at once and speedily concluded.

Next, the matter of the Cuban elections is brought up. Much is sought to be made of the statement that inhabitants of the Isle of Pines participated in these, which were held in Cuba during the American occupation, in the year 1900. But the truth is, and if the chairman had made a little more careful inquiry into it he would have ascertained, that the only inhabitants of the Isle of Pines who participated in these elections were Cuban citizens resident on the Isle of Pines. The Americans did not vote. Order No. 218 of General Wood, dated October 14, 1901, is also cited. The same comment which has already been made of the census report applies also to this order. Thus far, then, nothing has been proved against the American contention; no reason for sacrificing their "vested rights" has been shown.

The Platt amendment comes next in mention. Under no view can this act be construed as transferring title to Cuba. Indeed, it expressly excludes Cuba. The minority report already referred to has this to say (page 192):

> "Article VI of the Platt amendment, in its widest possible interpretation, contains no admission of title in Cuba to the Isle of Pines. On the contrary, it disaffirms the existence of such title in the provision 'that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba.' No title

to the Isle of Pines could legally exist beyond those boundaries. Then the language of the act proceeds,—'the title thereto being left to future adjustment by treaty.' The possession of the island is not specifically provided for, but it follows the title by the intendment of law, and did not break away from the title and cross 'constitutional boundaries' to claim a rightful lodgment in Cuba. Congress made no such absurd provision in the Platt amendment."

"In fact and in law the title and the possession remained in the United States until the island should be otherwise disposed of."

"The High Strides of Our Commanding General in Cuba as Overlord of the Isle of Pines."

Such, then, remained the status of the isle until May 16, 1902, when still another act was done which can only serve to strengthen plaintiff's contention. On this day, and in anticipation of the transfer of the government of the Island of Cuba to its people, scheduled to occur four days later, our Secretary of War gave the military governor an order as to the Isle of Pines contrary to those given to Cuba. On the face of the order there was to be no relinquishment of this Isle of Pines. The explicit order was "*to continue the present government* of the Isle of Pines as a *de facto* government." It has been well said, "The Cuban Republic was about to assume sovereignty over the Island of Cuba; the Isle of Pines, being excluded by the fundamental law of Cuba from its jurisdiction, was to remain under the 'present,' that is, the *American military government*. There was no other government under which it could remain than the United States military government, which had been in control since January 1, 1899, when Spain withdrew. Furthermore, the War Department could not have failed to give instructions for the continuance of the military government unless it intended either to ignore the act of March 2nd, or to leave the isle without any government whatever."

Thus far, the plaintiff has marshalled in evidence extracts from the treaty, the official declarations of the War Department (1899 and 1902), the maps prepared by the Department of the Interior, and the proviso of the "Platt amendment," all in support of his Proposition II. It now becomes his duty to cite to this learned court an act which on its face appears to be one of the most flagrant cases of disobedience which ever occurred in the service of our government. General Wood must have been well versed in the previous legislation and correspondence in regard to the Isle of Pines. He showed this in his interview on April 17, 1902, with the three delegates sent by the American residents to learn from him the then administration's views concerning the future of the isle. In this interview he declared himself to be squarely in favor of retention by the United States. (See copy of letter stating the interview, submitted herewith and marked Plaintiff in Error's Exhibit C.)

A few weeks later (May 16, 1902) the Secretary of War ordered him *to continue* the present government of the Isle of Pines. Since this was an American military government, that must have been what he intended to be continued. Instead of obeying this order of his superior; instead of respecting the act of Congress expressly excluding the isle from Cuban control; instead of keeping his assurances to the delegates, General Wood transferred its affairs to the Republic of Cuba, by which they have since been administered.

This act, plaintiff submits, was one devoid of law or authority. It was grossly in excess of the governor's powers, or even those of the War Department staff, inasmuch as the Platt amendment had been passed, and therefore wholly void as to its power to bind our government. Mr. Thompson's article, already quoted from, has this caustic, yet apparently deserved criticism:

> "A more amazing instance of disregard of law would be hard to find. A United States Army officer

ignoring an act of Congress, and the orders of the War Department, and at the same time participating in the assumption of another state of powers, not only denied to it by law, but actually hostile to the rights and interests of the nation General Wood was supposed to represent."

The General, however, claims that he was simply obeying the order, or some order, of his superior. On a resolution of our Senate, dated February 16, 1903, he made an endorsement of which the following part is now in point:

"OFFICE OF THE LATE MILITARY GOVERNMENT OF CUBA,

WASHINGTON, *Feb.* 20, 1903.

"Respectfully returned to the Bureau of Insular Affairs. * * * Under the military government of Cuba the Isle of Pines was governed by municipal officials, subject to the general authority of the civil governor, who received his authority from the Governor General. The Isle of Pines as it existed under the military government *was transferred* as a *de facto* government to the Cuban Republic, pending the final settlement of the status of the island by treaty between the United States and Cuba. *The action taken by the military government was in accordance with telegraphic orders from the honorable the Secretary of War.*"

59th Cong., 1st session, Senate Document No. 205, p. 7.

We find nothing in the records which will justify the last sentence of this quotation.

To this act of disobedience by General Wood, or to the violation of its powers by the War Department, as the truth may be, and not to any right or treaty, plaintiff has shown the Republic of Cuba owes her present administration of the isle. The most convincing proof of this—of the absence of legal title in Cuba—is that Republic's conduct in regard to

the proposed new treaty of July 21, 1903, which for excellent reasons has thus far failed of passage by our Congress. This document, in brief, seeks to present the Isle of Pines to Cuba as a gift. Plaintiff uses the word "gift" designedly. Of course, for the sake of the appearance of legality, a consideration is stated. But what is it? A formal agreement to present certain naval stations which are *already ours by separate treaty!*

The articles of this treaty, so far as they relate to this isle, read:

> "The United States of America relinquish in favor of the Republic of Cuba, all claim to the title to the Isle of Pines, situated in the Caribbean Sea, near the southwestern part of the Island of Cuba, which has or may be made in virtue of Articles I and II of the treaty of peace between the United States and Spain signed in Paris, December 10, 1898. This relinquishment by the United States of the claim of title to said Island of Pines is made in consideration of the concessions of coaling and naval stations which have heretofore been made to the United States of America by the Republic of Cuba."

Senator Morgan exhibits it thus (page 196):

> "If the people had notice of any possible infirmity of the title of the United States, it could only have arisen from an unjust suspicion or conjecture that the President and the Senate would sell the Isle of Pines to Cuba or give it away to satisfy some political conditions that might give trouble to the Cuban government. The people did not suspect that a 'consideration,' the amount and character of which is unknown, would be exhumed from some secret transaction about 'grants of coaling and naval stations in the Island of Cuba heretofore made,' or would ever be made the 'consideration' of the relinquishment of the title of the United States to the Isle of Pines under the Platt amendment or the Treaty of Paris. The people had no such suspicion and could not entertain it without discredit to their government. It is this secret consideration that is set up in this treaty for their undoing."

Senator Morgan continues:

"The grants mentioned in 'the foregoing leases' are, in fact, treaties that were never sent to the Senate for ratification, nor have they ever been proclaimed as treaties. * * * It will be seen that the consideration expressed therein is the annual payment of $2,000 in gold by the United States to the Republic of Cuba 'as long as the former shall occupy and use said areas of land by virtue of said agreement.' This consideration is definite and includes the entire purchase price of the lease so far as the people could possibly have ascertained if they had ever been informed officially of the terms of the agreement.

"Now, a new and unexpected condition of alleged facts is disclosed in the treaty as the consideration of the sale of the Isle of Pines to Cuba, which is stated in article 2 of the treaty as 'the relinquishment on the part of the United States of America of a claim of title to the said Isle of Pines.' A perfect title is thus reduced to a 'claim of title' to the Isle of Pines, and the people are to forfeit their homes and their actual liberties, that are native to Americans on American soil, upon and in discharge of a consideration which, if it ever existed, was kept secret until this treaty was sent to the Senate—a consideration that contradicts the very terms of the lease agreements that were signed by the President of Cuba and the President of the United States.

"This secret consideration is the only one that is stated in the treaty as the price of all the wrongs, disappointments, and hardships of more than 2,000 citizens of the United States, many of whom can never recover from the blow thus inflicted. In every possible sense this must be regarded as an act of extreme injustice that falls with crushing weight upon people who are practically helpless.

"The people of the United States are made to pay $2,000 per annum for the lease of two localities for naval stations in Cuba, *'to enable the United States to maintain the independence of Cuba and to protect the people thereof,'* after having expended more than $100,000,000 for this purpose, and, when political conditions in Cuba seem to require a further sacrifice

to save President Palma and his party from being turned out of office, the United States relinquishes all claim to the Isle of Pines, for some secret consideration, and throws into the grasp of this Moloch the rights, property, homes, churches, school houses, and the peace and happiness of more than 2,000 honest Americans, after accusing them of the hardihood of exposing their families to ruin in making rash speculations in purchasing property that the government might in some unforeseen event, or for some secret consideration, choose to turn over to the government of Cuba."

The activity of the Cuban officials in their efforts to procure the passage of this proposed treaty by our Congress shows up in brightest light the emptiness of their prior claims: for if, as they assert, the isle is Cuba's, then why this treaty? Friends of the Americans resident on the isle and lovers of right and justice everywhere have hastened to their support. This proposed treaty has thus far been successfully opposed on the ground that it gives away a valuable possession without due compensation. It is not a question of returning to Cuba something belonging to her, for throughout this brief argument has been added to argument in proof that the isle never belonged to Cuba. It is not a question of "justice to Cuba." We owe nothing. Indeed, the impartial observer would consider this island republic as being greatly indebted morally to our kind government, to whom it owes its very existence at this present time.

First, then, it is a question of keeping what by law and by right belongs to us.

An exposition of the strategic and the commercial importance of the isle is set forth in the appendices of the Report of the Committee on Foreign Relations, 59th Congress, 1st session, Senate Document No. 205, pp. 64 to 71, inclusive, a copy of which is submitted herewith.

Secondly, it is a question of our government keeping faith

with the rights and reasonable expectations of its own citizens.

In reliance upon all these public, official declarations of the United States' ownership, many hundred sturdy American men and women from at least twenty-five different States had sold out their holdings in the United States and emigrated to the isle. This took place almost entirely during the interval between the autumn season of 1899 and the spring season of 1901, inclusive—that is, subsequent to the declarations of the treaty and of the Assistant Adjutant General and prior to the raising of any question as to their country's title to this isle, the said question having been first raised by the United States government itself in the "Platt amendment."

In the isle these Americans purchased land and immediately began the making of improvements, the same as they would have done if they had removed to any other territory belonging to the United States. Believing that their government would protect them in their rights, they sought the wonderful climate, medicinal springs, fertile soil, fine timber, and other advantages offered in the island (*vide* 59th Cong., 1st sess., Senate Document No. 205, pp. 64 to 71, incl.). These people are *bona fide* citizens of the United States. They had no intention of expatriating themselves, and they now, with one accord, appeal to their own government for a final determination that they are still on United States soil. Still others, remaining behind, had sent forward money for investment. As a result of all this American enterprise and progressiveness, nine-tenths of the island, or more than 600,000 acres, now belong to our citizens, together with the improvements thereon, amounting in value to more than a million of dollars.

These American citizens are unanimously and unalterably opposed to the idea of being subjects of Cuba. They refuse to believe that the War Department misled them by declar-

ing that the isle was American territory, and that the same government will now say it is not. Their present attitude is one of strong hope and trust in the justice of this learned court when once the facts are fully and fairly presented.

The Isle of Pines, not being a foreign country under the commerce law, but, like Porto Rico, a part of the United States, it follows that the seizure, etc., complained of by plaintiff and the detention after demand made was unwarranted, illegal, and an act of conversion.

De Lima *v.* Bidwell, 182 U. S., 1, at 198 *et seq.*
Dooley *v.* United States, 182 U. S., 222.
Armstrong *v.* U. S., 182 U. S., 243.

This plaintiff is accordingly entitled to a finding that the Isle of Pines is a part of the United States, and that the judgment of the court below should be set aside and the case remanded with instructions to give judgment for the plaintiff.

Respectfully submitted.

JAMES C. LENNEY,
Solicitor for Plaintiff in Error.

NEW YORK, *February* 15, 1907.